KASHMIR PROBLEM

POSSIBLE SOLUTIONS

WANCHOO MEMORIAL LECTURE

BY

Justice (Retd.) V.M.Tarkunde

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INTRODUCTORY

Many of us who had known Late H.N.Wanchoo closely, ha been thinking of paying homage to his memory, eversince he fell victim to the bullets of assasins on December 5,1992.

After so many postponements for one reason or the other, the Memorial Lecture was delivered at Nehru Memorial Museum & Library on May 6,1995, by Justice (Retd) V.M.Tarkunde.

While the distinguished former dipolmat and scholar Mr.Badruddin Tyabji presided over the lecture, a host of prominent publicmen and distinguished intellectuals attended the day-long discussion on Kashmir, many of whom paid rich tributes to the memory of late H.N. Wanchoo who had fallen a martyr to the cause of Kashmir.

Justice (Retd.) V. M. Tarkunde's thought-provoking and inspiring lecture will go down in history as a laudable contribution towards resolution of the crisis in Kashmir.

We are confident that the memorial lecture will stir a fresh thinking on the Kashmir problem throughtout the subcontinent and will provide an impetus to an uninhibited exchange of ideas through an effective dialogue and discussion.

Saifuddin Soz
New Delhi
July 24,1995

Late Shri H. N. Wanchoo

H.N. WANCHOO MEMORIAL LECTURE
THE KASHMIR PROBLEM : POSSIBLE SOLUTIONS

—V.M. TARKUNDE

We are meeting today to honour the memory of Late H.N. Wanchoo, who was one of the truly heroic figures in the Kashmir valley. He was well known for his devoted trade union work. He was entirely untouched by communal feelings and was a friend of Hindus and Muslims alike. Although a Hindu pandit, he remained in the valley, after the exodus of most of the Hindus, to carry on his social work. He had filed a petition in the Jammu and Kashmir High Court for remedial action under Article 21 of the Constitution against the appalling excesses committed by the security forces against innocent persons in the valley who were not involved in militant activities. He used to file in the High Court every month a list of innocent persons, who were killed while in police custody; another list of innocent persons who were arrested but whose whereabouts were unknown and a third list of innocent persons who were killed by police firing when such firing was not aimed at militants. My last meeting with H.N. Wanchoo was at Delhi on 23rd November, 1992 when we discussed the Kashmir situation at length. He was murdered within a fortnight thereafter on 5th of December, 1992, by persons, whose identity is still unknown. Thus, we lost a person who could have been very useful to us in resolving the Kashmir problem.

I. Background of the Accession of Jammu & Kashmir State

At the time of the accession of Jammu & Kashmir to India on 26th of October 1947, the State consisted of, at least, five areas which had distinct culture and histories. The state of Jammu was the headquarters of the Dogra rulers. The Dogras acquired Ladakh, Baltistan, Kashmir and Gilgit at different times and in different ways. The small district of Poonch came to the Dogra rulers as late as in 1936 and this may be regarded as the sixth part of the state of Jammu & Kashmir. Since the cease - fire in the Indo-Pak conflict in 1949, Pakistan is in possession of Baltistan, Gilgit agency, a small part of the Kashmir valley and of the western part of Poonch. India is in possession of most of the Kashmir valley. Of course, only the Kashmir valley and a part of Poonch are the trouble areas and they are the crux of what is currently described as the Kashmir problem.

Before deciding what steps should be taken to solve the Kashmir problem, one must be clear about why the state of Jammu & Kashmir acceded to India and why thereafter the people of the Kashmir valley have become almost completely alienated from India.

Before the accession of Jammu & Kashmir to India in 1947, the people of that state did not have any particular affinity towards India. The different regions which came under the Dogra rule had different cultural identities. That was particularly so in the case of the people of the Kashmir valley who had a distinct language, distinct cultural traditions and a long history of their own. At the time of leaving India, the British rulers gave to the Indian Princes the right to decide the future of their

respective states. They could join India, they could join Pakistan and they could presumably remain independent. Of the various Indian states, the only state which had a decisive Muslim majority and which nevertheless acceded to India was Jammu & Kashmir. If we take a long-term view, there are three reasons which explain why a predominantly Muslim State agreed to join India.

One reason was that it was the teachings of Sufi Saints which converted almost all the people of the Kashmir valley to the Muslim faith several centuries ago. Sufism was always conducive to communal amity and that is why there were hardly any communal riots in the Kashmir valley between Muslims and the tiny minority of Hindu pandits even in the days of British suzerainty. That was also probably why the Muslims of Jammu and Kashmir, particularly those of the Kashmir valley, did not fall a prey to the two nation theory propagated by the Muslim league in India.

Another reason which facilitated accession to India was the friendship which had developed between Sheikh Abdullah and Jawahar Lal Nehru. In or about 1930, Sheikh Abdullah had launched a movement for freedom from the autocratic rule of the Maharaja of Jammu & Kashmir. Jawahar Lal Nehru had supported that movement while, curiously enough, Jinnah had opposed it. The movement had gained a good deal of popularity by 1947.

The third and the most proximate reason for the accession of Jammu & kashmir to India was the attack on Kashmir in October 1947 by some Muslim raiders, supported by Pakistan, from the western side of Jammu. Although Pakistan had expected that the local Muslim

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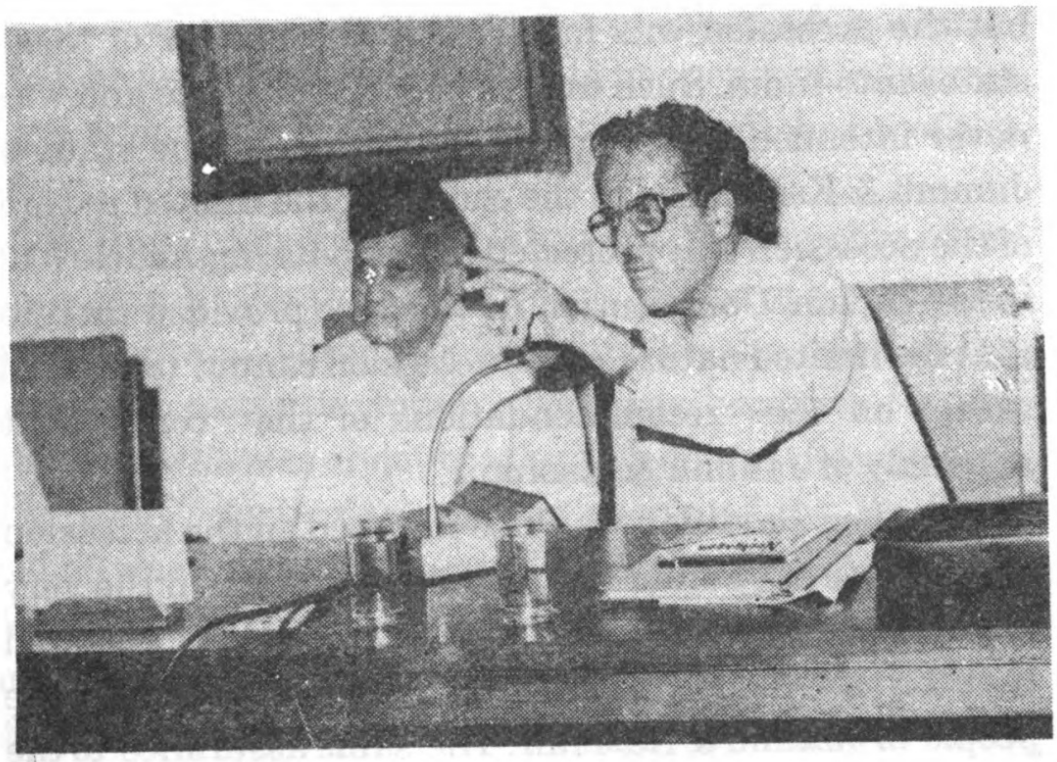

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population would rise in favour of the Muslim raiders, they actually opposed the invasion of the raiders. However, the Maharaja of Jammu & Kashmir did not have the military strength to repel the attack of the raiders who had come within a striking distance of the Srinagar aerodrome. It was in this situation that the Maharaja of Jammu & Kashmir rushed to Delhi and requested that Indian military aeroplanes be sent immediately to Srinagar to defend his land. Indian leaders agreed to do so if Jammu & Kashmir were to accede to India. The Maharaja had no other alternative but to accede.

It is, however, necessary to emphasize that the accession of Jammu and Kashmir to India was limited to the three subjects of defence, foreign affairs and communications and was expected to remain limited to these subjects. In the case of other Indian States also their accession was initially limited to these three subjects, but the accession was followed by the merger of these states into India. Such merger never took place and was never intended to take place in the case of the state of Jammu & Kashmir. On the contrary, the limited nature of the accession was protected by introducing Article 370 in the Indian Constitution. It was also provided therein that the limited nature of the accession cannot be altered except on the recommendations of the constituent assembly of Jammu & Kashmir.

Another condition was also imposed on the accession of the State of Jammu & Kashmir to India. On the very day of accession, the Viceroy, Lord Mountbatten, declared that the accession was subject to its ratification by the people of Jammu & Kashmir. The same assurance to the people of Jammu & Kashmir was given thereafter on

several occasions by Pandit Jawahar Lal Nehru, the then Prime Minister of India.

II. Main features of the Kashmir problem

As will be seen hereinafter, the main cause of the alienation of the people of Jammu & Kashmir, particularly the alienation of the people of the Kashmir Valley, was that not only that the accession was never put up for ratification by the people of Jammu & Kashmir, but on the contrary, the autonomy granted to the state by Article 370 was greatly eroded by a series of measures adopted by the Government of India. If the accession of the state had been allowed to be freely ratified and if the autonomy of the state had been respected by the Government of India, it is possible that the sense of separate identity of the people of Jammu & Kashmir might have been softened and the sentiment of national unity with India might have developed among the people of Jammu & Kashmir. This, however, was not allowed to happen, but measures were adopted to gradually destroy the autonomy of the State.

Initially, Jawahar Lal Nehru and presumably other Indian leaders were quite agreeable to have a plebiscite in the state of Jammu & Kashmir on the issue of the State's accession to India. This was because Sheikh Abdullah who was undoubtedly the leader of the people at that time, particularly of the people of the Kashmir valley, was wholly in favour of accession to India. It was Pakistan which was then reluctant to have a plebiscite unless it was held by placing the state under the control of the United Nations so as to neutralise the influence of Sheikh Abdullah.

However, Sheikh Abdullah changed his attitude in 1950 when he began to suggest that there was a third alternative to the State of Jammu & Kashmir which consisted of independence from both India and Pakistan. It was because of this change of opinion that Sheikh Abdullah, while he was the designated "Prime Minister" of Jammu & Kashmir, was dismissed and arrested and Bakshi Ghulam Mohammed became the Prime Minister. After this event, in view of the absence of the Sheikh Abdullah factor, India was clearly most reluctant to have any plebiscite on the issue of the accession, while Pakistan became insistent in having it. Because of India's unwillingness and various difficulties which were raised by it after 1953, a plebiscite on the accession issue never took place.

It is claimed by the majority of Indian nationalists that the consent of the people of Jammu & Kashmir to the accession was implicit in the resolution passed by Jammu & Kashmir's Constituent Assembly in favour of accession in February 1954 (after Sheikh Abdullah's dismissal and arrest), as well as in the subsequent elections which took place in the State and which led to the elections of legislative assemblies and Chief Ministers in Jammu & Kashmir were favourable to the State's accession to India. Little value, however, can be attached to the resolution in favour of accession passed by the Jammu & Kashmir Constituent Assembly in February 1954. The Constituent Assembly was not elected on the issue of accession at all. Moreover, it is little known in India that not more than 5% of the voters cast their votes in the election of the Jammu & Kashmir Constituent Assembly. Sheikh Abdullah, although a popular leader was in reality an autocrat. He

saw to it that hardly any person other than a member of his National Conference contested the election to the Constituent Assembly, either by prevailing upon other constituents to withdraw their candidature or by ensuring that their candidature was arbitarily rejected.

As to the subsequent elections in Jammu & Kashmir, it cannot be disputed that all these elections (except the one in 1977 when Morarji Desai was India's Prime Minister) were manipulated by the Central Government so as to ensure the election of candidates who were favourable to the accession of Jammu & Kashmir to India. Bakhshi Ghulam Mohammad himself and the subsequent Chief Ministers of Jammu & Kashmir were in reality the nominees of the Indian Government and they were so regarded by the people of that state. It does appear that the Indian Government never believed that the people of Jammu & Kashmir, if left to themselves, would elect a legislature which would be favourable to the State's accession to India. The complaint of the Kashmiris that the promise of plebiscite was breached by India is, therefore, quite substantial.

While the accession of the State to India was thus never ratified, the autonomy guaranteed to the people of the State was increasingly encroached upon by the Government of India. Article 370 of the Constitution provides that the President of India (which means the Indian Government) shall have the right to declare, in consultation with the Government of Jammu & Kashmir, the matters which are covered by the three subjects of defence, foreign affairs and communications. After Sheikh Abdullah was dismissed and arrested, the President of India in consultation with the then Government of Jammu

& Kashmir issued in 1954 an Order consisting of a list of the matters covered by these three subjects. The list was augmented by subsequent amendments. The result was to erode to a large extent the substance of Article 370 and the conditions agreed to at the time of accession, by including in the 1954 order a number of matters not strictly covered by the three agreed subjects. This was possible because of the manipulation of the State Assembly Elections. The limit of such erosion of Article 370 was reached when Articles 356 and 357 were included in the 1954 order so that the executive as well as the legislative powers in respect of Jammu & Kashmir could be taken under the control of the Central Government and the Indian Parliament. That is why the present leaders of Kashmir maintain, with a great deal of justification, that a breach of trust was committed by India in respect of both the conditions of the accession, namely, holding of a plebiscite and the limits imposed on India's right to deal with Jammu & Kashmir.

The State's autonomy was completely destroyed when Farook Abdullah was prevailed upon to from in Jammu & Kashmir a coalition government consisting of representatives of his National Conference and those of the Congress (I) party. The coalition became highly unpopular because it was standing demonstration of the rule of India (through the Congress (I) Party) over Kashmir, contrary to the spirit of the instrument of accession.

It was during this coalition government that insurgency in Jammu & Kashmir commenced in the middle of 1989.

There is a tendency on the part of many of the nationalists in India to attribute the entire insurgency in Kashmir to the machinations of Pakistan. The fact is that

Pakistan has been wanting right from 1947 to see that Jammu & Kashmir secedes from India and accedes to Pakistan. But Pakistan could not succeed in its designs till the bulk of the people of Kashmir were wholly disillusioned about the propriety of their accession to India. The people of Kashmir did not support Pakistan either in the first war of 1949 nor in the second war of 1965. Pakistan was never in a position to generate, on its own steam the dissatisfaction against Indian accession among the people of Kashmir. Pakistan could take advantage of the dissatisfaction which had arisen by 1989 as a result of India's continued distrust of the people of Kashmir and its failures to fulfill the conditions of the agreement of accession. While Pakistan has not been the cause of the generation of disaffection against India in Jammu & Kashmir, it has certainly fomented it and has assisted the militants by training them and supplying them with arms and other means of terrorism.

Militancy started in the Kashmir valley in the second half of 1989 but took a virulent form in the third week of January 1990. On 21.1.1990, a huge procession, which was shouting slogans in support of Azadi (freedom) but was quite peaceful, was fired upon by Indian para-military forces causing the death of scores of processionists. This and similar incidents resulted in the increase of militancy, and the increase of militancy led to greater excesses by the para-military and military forces.

Thus militancy in Kashmir and the excesses of the security forces were feeding and fomenting each other. The security forces have, of course, right and indeed the duty, to return the fire of the militants and take adequate legal action against them. When we speak of execesses of

the security forces, we do not include the legal action which they were entitled to take against the militants. Excesses occurred when the action of the security forces went much beyond the bounds of law. The security forces, it is true, were acting under considerable tension and it was natural that if one of their colleagues was injured or killed by the militants, their counter-attack would be more severe than what was legally justified. But quite often, the counter-action of the para-military forces were far beyond the limits of any reasonable justification. Entirely innocent persons were fired upon and killed several Kilometers away from the place where the militants had attacked the security forces. Very often, hundreds of houses in a locality were burnt down and the fire fighting machinery was not allowed to be used to put down the fires. Since 1992, the military forces in Kashmir have developed a technique of what has come to be known as "military crack downs". These crack-downs result in a large number of innocent persons being brutally tortured and some of them being whisked away and probably killed because their where-abouts remain unknown to their relations and friends. The natural result of this method of meeting with the militancy was that the entire people of the Kashmir valley have now become almost completely alienated from India.

Human Rights activists have been criticised in both official and non-official circles on the ground that, while they criticise in severe terms the excesses committed by the security forces, they do not criticise the violations committed by the militants. When it is pointed out to the critics that the Human Rights activists have also condemned in their reports the violations committed by

the militants, the critics claim that the condemnation is less severe than that in the case of the security forces.

Two considerations are relevant in assessing the validity of this criticism. In the first place, the excesses committed by the security forces were far greater and more brutal than those of the militants and quite disproportionate to the provocation given by the militants. Secondly, we must bear in mind that although the militants and other terrorists always act in contravention of the law, it is the duty of the law-enforcement machinery consisting of the security forces to keep themselves within the bounds of law. In a democracy, lawless action of militants and other perpetrators of crimes must be dealt with the powers which have been conferred on them by the legislature precisely for meeting the situation created by the offenders. Torture, rape, arson and killing in fake encounters is wholly unlawful and it should not be condoned because a high degree of militancy exists in any part of the country. No person who is acquainted with the situation in the Kashmir valley can have any doubt that the hostility of the valley people towards India has been materially augmented by the excesses of the security forces.

It is true that militancy in the Kashmir valley has gone down to a considerable extent in the last couple of years. It is also true that some anti-social elements have entered into the militants' ranks and that, on this account, the popularity of the militants has decreased to a considerable extent. While the reduction in militancy and in the popularity of militants is a welcome development, one should remember that this does not imply that the alienation of the people from India is any

less than before. It is likely that their alienation from India and their bitterness against the Indian Government has been on the increase all the time.

It is necessary to notice another disturbing development which appears to be taking place in the Kashmir valley. From the beginning of the militancy and till about 1992, there was little doubt that the bulk of the valley people were in favour of Azadi. While they wanted secession from India, a decisive majority of them did not want to join Pakistan. It appears that till about 1992, Pakistan used to supply military hardware to all the militant groups including the J&K libration front and their allies who were in favour of seceding from India without joining Pakistan. From 1992, the supply of arms by Pakistan to JKLF and its allies has been stopped, while arms continue to be supplied to pro-Pakistan militants. The result is that the groups such as Hizbul Mujahideen which support Kashmir's accession to Pakistan are more active as militants. Since active militants are generally looked upon as self-sacrificing patriots and since the majority of them are now in favour of Kashmir acceding to Pakistan, there has been an increase of a Pro-Pakistan sentiment in the valley. Thus the Kashmir movement, which was secular to start with, appears to have now become communalist to a considerable extent. It is possible that the majority of the valley people are still in favour of Azadi, but the situation may develop further in favour of Pakistan if the solution of the Kashmir problem is further delayed by the Government of India.

Another disturbing feature of the Kashmir problem is the departure from the valley of almost all Hindus and quite a number of Muslims who supported the National

Conference. One of the reasons for the departure of Hindus was the threats given to them by the Pro-Pakistani elements among the militants. With the gradual communalisation of the Kashmir movement which is now taking place, it may become more difficult to secure the return of the refugees, particularly the Hindus, and to rehabilitate them in the Kashmir valley.

The Kashmir situation is thus characterised by the continuation of the excesses of security forces, the almost complete alienation of the local people from India, the increasing communalisation of the Kashmir movement and the growing difficulty of bringing about the return and rehabilitation of the refugees, particularly Hindu refugees, in the valley.

III. Possible solutions

There are two mutually inconsistent approaches to the solution of the Kashmir problem. One approach is characterised by narrow nationalism and the other by principles of democracy and humanism.

The narrow nationalist approach is the one openly adopted by the BJP. It is, however, shared by many supporters of the Congress (I) as well as other parties and by several persons who do not belong to any political party. The sentiment of narrow nationalism leads to the view that there is no adequate reason why Jammu & Kashmir should have a different status in the Indian union than the other states. Sponsors of this approach insist that the secessionist movement in Kashmir should be put down by a strong hand and that Article 370 of the Constitution is now redundant and should be abolished. This view gives more importance to the land of Kashmir

than the people who, and whose forefathers have stayed in the valley for several centuries. Kashmir, they say, must remain a part of India irrespective of whether the people of Kashmir want to be Indians. Even a comparatively more broad-minded BJP leader like Shri Atal Behari Bajpai is reported to have said that Kashmir must always be a part of India and that those people in the valley who do not want to be Indians should leave the country.

This solution of the Kashmir problem, if solution it may be called, amounts to the imposition of Indian imperialism over Kashmir. It is in conflict with international opinion and is bound to make India unpopular in the comity of nations. It is to be hoped that the majority of the Indian people would not adopt such a totally undemocratic approach. It is contrary to the spirit of tolerance which is one of the main virtues of India's cultural heritage.

The alternate approach based on the values of democracy and humanism has been advocated right from the time when militancy took a virulent form in the Kashmir valley. It was suggested by a team of the Peoples' Union for Civil Liberties which visited the valley in March 1990 and by several teams of the Citizens for Democracy, the Kashmir Coordination Committee, the Independent Initiative on Kashmir and other organisations which visited the valley from time to time. These Human Rights Organisations urged repeatedly on the Government of India that it should have an early dialogue with the known leaders of the Kashmir movement, without imposing any preconditions. They also urged that the Indian Government should offer the

maximum autonomy to the state of Jammu & Kashmir in order that the leaders of the militants may agree to participate in the dialogue. They proposed that India should offer to delete those provisions in the Presidential Order of 1954 which eroded the autonomy of the State and that the Government of India should make it clear that the right of the Indian Executive to deal with the affairs of Jammu & Kashmir will be strictly confined to the subjects of defence, foreign affairs and communications. Even the subject of communications, according to the proposal, should be limited to those aspects which are relevant to the defence of the State from foreign aggression.

At the proposed dialogue the militants are bound to demand a plebiscite on the question of the accession of Jammu & Kashmir to India. There are certain difficulties in implementing the promise of a plebiscite which should be frankly discussed in the proposed dialogue with the leaders of the militants. In the first place it is now clear that the militant leaders want a plebiscite which would extend to the entire region which formed the state of Jammu & Kashmir. It is, however, extremely difficult to assume that the people of Jammu and Ladakh on the one hand, and those of Baltistan and Gilgit on the other, would like to join hands with the people of Kashmir valley in such a plebiscite. Although the people of Jammu and Ladakh want autonomy for their respective regions, it does not appear that the majority of them want to secede from India. Similarly, there is no demand by the peoples of Baltistan and Gilgit for secession from Pakistan, although they have grievances against the Pakistan Government. The language and culture of the people of Jammu, Ladakh, Baltistan and Gilgit are entirely different

from those of Kashmir and they do not also have a common history. Before taking a decision in favour of a plebiscite on the question of accession of Jammu & Kashmir to India, the wishes of the peoples of Jammu, Ladakh, Baltistan and Gilgit would have to be separately assessed. If such an assessment is made, it appears very unlikely that the people of these four regions would agree to throw in their lot with the people of Kashmir.

Secondly, among the leaders of the Kashmir militants themselves there is no unanimity on whether the plebiscite should be confined to a choice between joining India or Pakistan and whether a third choice of being free from both the countries should be available to the people. When this question was recently discussed with those Hurriat leaders who favour the accession of Jammu & Kashmir to Pakistan, it was found that they were quite reluctant to admit that the third choice of Azadi should also be available to the people. On the other hand, the JKLF and its supporters are clearly in favour of complete Azadi. Moreover, the consent of Pakistan would also be necessary if the third choice of Azadi is to be given to the people in the plebiscite. Ms. Benazir Bhutto has expressed conflicting opinions on this question and it is also very doubtful whether the military junta in Pakistan would agree to a three-pronged plebiscite.

A third and perhaps the most formidable difficulty in deciding in favour of a plebiscite at this stage is the result which it would have on the communal situation in India if the majority in the plebiscite votes for secession from India and particularly if it supports accession to Pakistan. Secession of Jammu & Kashmir from India and accession to Pakistan would be looked upon as a second partition

of the country and it may lead to communal riots somewhat comparable to those which took place in 1947. Such an eventuality should be avoided as far as possible on humanitarian grounds.

In view of these serious difficulties in having a plebiscite, the Kashmir leaders should be urged during the proposed dialogue to postpone the demand for a plebiscite for a period of, say, about ten years and see whether the Indian Government adheres during this period to the promise of maximum autonomy. It is possible, and even likely, that if during this period the people of Jammu & kashmir are allowed to form a democratic government of their own, if there is no interference by the Indian Government in their internal affairs, and if they are thus allowed to enjoy the substance of freedom, their sense of alienation from India will be greatly reduced and their demand for secession from India may wither away. Another question which will have to be decided in the dialogue is in regard to the return and rehabilitation of those refugees, Hindus and Muslims, who have left the valley since 1990, Those of them who wish to return to the valley should be able to go back to their homes, and if their homes have been damaged or destroyed, they should be repaired and reconstructed at government cost. The militants should also give them an assurance for their personal safety in the valley.

For the final solution of the Kashmir problem an understanding between India, Pakistan and the people of Jammu & Kashmir is essential. It appears to me that we should first hammer out an agreement with the Kashmir leaders and only thereafter there should be a tripartite conference between India, Pakistan and

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representatives of Jammu & Kashmir. If a tripartite conference takes place before an agreement is reached between the Indian Government and the Kashmir leaders, India would be at a great disadvantage, because it would then be easy for Pakistan to wean away the representatives of Jammu & Kashmir from India and a democratic solution of the Kashmir will be elusive. To emphasise in this connection that so long as Pakistan remains a theocractic state, merger with Pakistan will not be in the interest of the people of Jammu & Kashmir. If, however, an agreement is reached between the Indian Government and the Kashmir leaders for a democratic solution of their differences, it would be possible in a tripartite conference to settle the Kashmir problem by treating the present line of control as the international boundary between India and Pakistan, as was contemplated at the time of the Simla agreement.

Although proposals for such a dialogue were repeatedly made to the Government of India, the latter took no steps in that direction. It appeared that the Government of India had no policy in regard to the Kashmir movement except to put down the militancy. Now the Government of India is apparently wanting to hold an early election in Kashmir, without attempting to reach any understanding with the leaders of the Kashmir movement. The Government of India appears to be under the delusion that the people of Kashmir are still in favour of the accession of their State to India and that it is only the fear of the gun which is preventing them from expressing their solidarity with India. When some of us were in Kashmir in May last year (1994) we found that the Governor Krishna Rao was under this delusion on account of the

reports of his intelligence agents. It is likely that the Government of India shares this delusion and believes that since the militancy in the valley has gone down, the situation is ripe for an early election. Those who are in touch with the ground realities know that an election without an understanding with the genuine Kashmir leaders will be a mere farce and that any government formed in the state on the basis of such a fake election will only aggravate the Kashmir problem.

It should be realised that India has gained nothing, either politically or economically, by continuing its rule over the Kashmir valley against the wishes of the people. The Kashmir problem can be successfully tackled only by adopting an approach guided by the principles of democracy and humanism.

HOMAGE TO WANCHOO

Justice Tarkunde :

Regarding Mr. Wanchoo I want to say that I had the highest regard for him as he was both a trade union leader and a social worker. He was entirely free from any communal feelings. When most of the Hindus had left Kashmir valley, he remained there for his social work and for his trade union work. He also had filed a petition in the High Court in regard to the great excesses committed by the security forces against those Kashmiris who were not involved or who were suspected to be involved in militancy. Every month he used to present to the High Court three lists. The first list was of people who were killed in the custody of security forces.

The second list was consisting of those who were arrested by the security forces and whose whereabouts were not known so that they might be presumed to have been killed.

The third list was of persons who were killed in firing by the security forces at a time when there was no cross-fire. He used to send these lists. He gave me the lists when he last met me. He last met me on the 23rd November, 1992 and within two weeks thereafter, he was killed by persons whose identify is still unknown. We lost a very good man who might have been helpful in solving ultimately what we call the Kashmir problem.

Shri Kuldip Nayar :

I must bring in one person, the late Mr. Wanchoo about whom probably many people do not know. After his assassination, within two months, I happened to be in Srinagar. Rajender Sachar was also with me. We went to his house. Of course, they were very much aggrieved over what had happened and, at that time, wife of Wanchoo said 'Look here, I can recognise those militants who have killed him'. But, she was equally and fiercely strong on one point. She said, 'We are Kashmiris and we can deal with them. But Indians have no business to dictate us or do anything because we are as much against you as we are anti-militants'.

This came as a very great surprise to me because with all the tragedy, the Kashmiriat was very strong; that was a lesson for me.

As for Late Wanchoo himself I have no hesitation in saying that he was a great Kashmiri and he fell martyr to the cause of Kashmir. I knew him as an activist. whenever we visited Srinagar on behalf of any Human rights Organisation, whether to inquire about certain excesses of the security forces or to discuss any political formula for the solution of the Kashmir problem, Wanchoo Sahib was an integral part of that search. He was an untiring crusader. It goes to his credit that he single-handed prepared a list of some missing Kashmiris and filed a writ in the state High Court. Only a few days before his assassination he contacted us, Citizens for Democracy (CFD) and sought our cooperation to make it an all India issue. The Kashmiri Pandits misunderstand him. He was fighting for the syenthesis which had kept Muslims and Hindus in Kashmir far from fanaticism and

fundamentalism. In anger, the kashmiri Pandits had ousted him from the Biradari and had isued a fiat that no Kashmiri Pandit should marry the daughter of Wanchoo. A person who fought all his life against prejudice was its prey. The Kashmiri Pandits probably realize today that he, if alive, would have hastened their return to their homes.

Shri Indrajit Gupta :

I am extremely sorry that due to circumstances beyond my control, I missed Mr. Justice Tarkunde's Opening Address which I gather from all the remarks which are being made here, was really a very brilliant and thought-provoking analysis of the situation. Nevertheless, I would like to take this opportunity to express my deep sense of homage to the memory of H.N. Wanchoo who, apart from anything else, happened to be a comrade of ours, a fellow trade unionist with whom I worked on several occasions. He came to Delhi just a few days before he was killed and had a discussion with me and everybody knows how universally he was respected in Kashmir.

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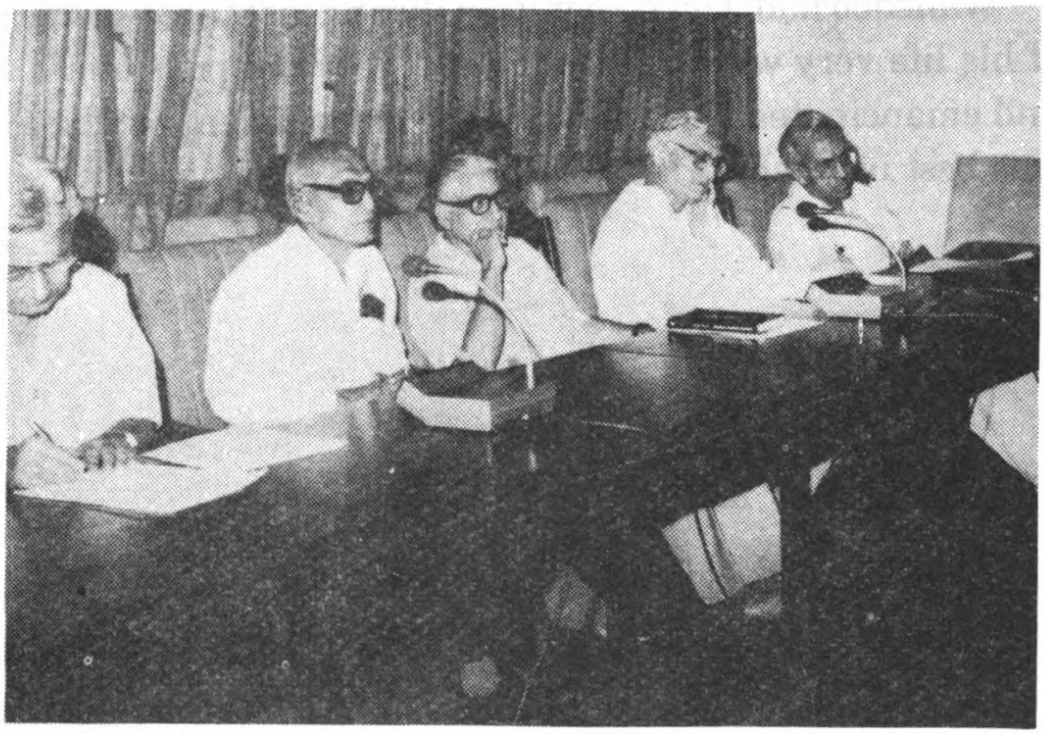

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Shri Rajinder Sachar

Late Shri Wanchoo was dedicated to the cause of the down-todden. During the strife in Kashmir, he came into conflict with the Jammu & Kashmir Administration as he thought it had got communalised.

Wanchoo raised his voice against the atrocities that were attributed to the para-forces, but his way of doing things was different as he maintained record of what he observed to be true. He was consistently of the view that in the absence of compassion for the innocent common people and lack of socio-political inputs, the military response to the problem in Kashmir would not lead the government of India anywhere.

Wanchoo lamented the passive response of the Union of India to the situation in Kashmir which had largely been created by it (centre) through mishandling Kashmir over a long period of strained relationship.

Wanchoo had won recognition during last three years of his life very widely not only as a very compassionate and emancipated person but as the embodiment of what was best in Kashmiriat.

Balraj Puri

"It is dangerous to be too good." Truth of this statement of Bernard Shaw about Gandhi was proved in the case of Hirday Nath Wanchoo also. His only crime for which he was made to pay with his life was that he was too good to remain unmoved by the suffering of the people of Kashmir. His belief in human rights did not end with expression of sympathy with the sufferers or issuing statements of protest. He fought constitutional and non-violent battles against state terrorism with armoury of facts, logic and dedication. The monumental evidence he collected about custodial deaths and disappearances, without much organisational support, is a tribute to his genius and perseverance. His very existence in Kashmir was the greatest source of strength to the ideal of Kashmiriyat and its secular basis. The way his death was mourned and the respect his memory commands even today show that people continue to cherish that ideal.

Saifuddin Soz

It is a painful situation in my mind when I remember how Late Shri Wanchoo arrived in Delhi in November 1992. I had known him for a very long time. He was a very misunderstood person. He fought for Kashmir's honour, but he was misunderstood by some sections among the militants. Kashmiri pandits also misunderstood him. I knew the agony in Wanchoo's mind and heart. When he came to Delhi, the first thing he asked me was to fix appointments with four or five people. The first of them was Mr. Justice Tarkunde. I remember how I took him to Supreme Court of India where he discussed Kashmir problem with Justice Tarkunde for two to three hours. Mr. Wanchoo met Justice Tarkunde once again. He met Inderjit Gupta of the CPI, Comrade Surjeet of the CPI(M) and a couple of others, but he met nobody from the Government side. He met Miss Terlingon of the Amnesty International also, who was then in Delhi. But, back home, there was the tragedy of mis-understanding he had to face. In fact, I had cautioned Mr. Wanchoo then that he should not have come to Delhi because he would be misunderstood. There was a threat against him carried by the local press in Sirnagar sometime before his visit to Delhi that he was doing a lot of propaganda on Human Rights violations and thereby diluting the movement. He carried some cuttings also from the newspapers. He had, however, told me that since he had accepted a cause, he could hardly avoid the consequences.

WANCHOO'S ASSASSINATION CREATES A GREAT STIR

CBI to investigate Wanchoo's killing

Tribune Chandigarh, December 14, 1992

The Central Bureau of Investigation will inquire into the killing of Pro-militant human rights activist H.N. Wanchoo which sent shockwaves even among the most ardent supporters of the Kashmiri militants.

"If it can be Wanchoo, who can escape their (militants) ire" is the common refrain in Kashmir ever since the 65-years old human rights activist was gunned down in Karan Nagar locality on December 5, allegedly by three militants who tricked him into accompanying them.

"Mr. Wanchoo's killing is a lesson to all of us. If they (militants) did not spare a person who was a virtual tool in their hands, what can be the fate of others"?, said Mr. M.Y. Tarigami, CPM secretary. According to sources, even the militants and their supporters who allege that the government had a hand in the killing, are gravely shocked over the mysterious killing of one of their staunchest supporters from amongst Hindus in the valley.

Militants suspect that certain pro-Pakistan groups which had been openly disapproving of any secular elements being part of the "Kashmiri movement for freedom" had a hand in Mr. Wanchoo's killing. In this context it is significant that a few militant outfits had strongly protested against the solidarity being shown by the Hindu Forum, led by Mr. Wanchoo, with the militants. The Hindu Forum, an organisation of Kashmiri Hindus

who continue to live in the valley, had given a bandh call in support of militants in September.

According to the police, Mr. Wanchoo was approached by three militants on December 4 evening and asked to accompany them for a function at which hostages were to be released. He had pleaded that he was preoccupied but promised to oblige them the next morning. Mr. Wanchoo according to family sources, left home in the morning along with the three militants. Either one of the three militants or some other persons later dragged him out of an autorickshaw and shot him from point blank range, killing him instantaneously.

Mr. Wanchoo, a trade unionist and a member of the CPI, had been supporting the cause of militants ever since the mass migration of Kashmiri Hindus and other minorities from Kashmir in 1990.

His stance of criticising the migrants and eulogising the militants had earned him the wrath of his community, but it enabled the militants to project a secular image of the "movement" before the world's media.

He had filed scores of cases against alleged human rights violations and the security forces in court and was given the title of "champion of human rights" by militants and their supporters.

Mr. Wanchoo, holding a file in his hand, was a familiar figure around Srinagar courts. Ironically, even in death he held his file close to his chest.

His Jawahar Nagar residence had become a destination for all visiting journalists who wanted to know about human rights abuses by state agencies. Mr. Wanchoo had

even presented the cases of Kashmiris before Amnesty International team in Delhi recently.

Mr. Wanchoo's killing falls into the category of those pro-militant moderates who fell victim to the gun culture, despite their support for the militants' cause. These include Mohammad Shahban Vakil, Editor of a Srinagar daily, Mirwiaz Moulvi Farooq, and Nazir Siddiqui, a business man who negotiated a number of exchanges of hostages for militants with the government. Mr. Wanchoo had gone one step ahead of such moderates in supporting militants. He even denounced his community for which he and his family faced innumerable social problems. No one has claimed responsibility for these killings, Investigations have, however, proved the hand of a leading pro-Pakistan outfit behind the murder of Mirwiaz Moulvi Farooq.

Expectedly, Mr. Wanchoo's killing has initiated fresh migration of Kashmiri Pandits from the valley.

Wanchoo gunned down by unidentified gunmen

Kashmir Times, December 6, 1992

Mr. H.N. Wanchoo, veteran trade unionist and human rights activist was today (December 5, 1992) shot dead by some unidentified gunmen at Bal Garden by-lane in Karan Nagar locality of Srinagar city this morning. (December 5, 1992)

According to official sources, a group of gun-wielding youth pumped bullets on the face and body of the pro-militant leader, killing him on the spot. He was reported to have received four bullet injuries as a result of which he died on the spot.

The sources confirming his killing said that three persons came to his residence in Jawahar Nagar locality last evening and sought his help in seeking the release of some detenues from the police custody in exchange of some kidnapped persons.

The same youth were reported to have come to his house at about 8:30 AM today and told him that the detenues could be exchanged for the hostage who was in the captivity of some militant outfit. They took him in an autorickshaw from his residence at about 9:30 AM.
The autorickshaw was taken to Bal Garden in Karan Nagar locality where he was shot dead by them at about 11:00 AM. The residents of the locality came out of their houses on hearing the sound of the firing.

The sources said that the investigations to identify the killers were going on vigorously. They said that the accused would be identified and brought to book at the earliest. They said that a high level probe was also being done by the authorities.

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The 65 - years old Mr. Wanchoo was former member of the Srinagar Municipal Council. His daughter-in-law Mrs Kumari G. Wanchoo said that he was not feeling well in the morning. She said he handed over the kangri to her and asked for his court files and left the house immediately. Mr. Wanchoo is survived by four daughters, two of them married and a married son. It was stated that he was holding his files close to his chest in his left hand when he was removed to the hospital after he was shot at by the unidentified gunmen.

Mr. Wanchoo had filed over 100 cases against the State Government in the courts alleging human rights violations and seeking release of the detenues hailing from Kashmir valley during the past over one year. He was also completing the documentation of the human rights violations in the entire Kashmir Valley.

The veteran trade unionist recently met the team of the Amnesty International and apprised them of the human rights violations in the Kashmir Valley. He alleged killings of a number of people in custody and of innocents by the security forces.

A pall of gloom descended in major parts of the city as the news of his death spread. A large number of people started visiting his house where the body was kept for allowing the people to pay their homage. The cremation would take place tomorrow afternoon.

All the separatist organisations have condemned his killing and called for a mourning strike in the valley tomorrow. The outfits also said that the strike has been called to allow maximum number of people to attend his last rites.

Al-Jehad in a statement said that Mr. Wanchoo not only highlighted the Kashmir issue but also posted the central government of the situation in the Valley. It described his killing as the handiwork of intelligence agencies. The activists of the Hizb-ul-Mujahideen, JKLF, High Court Bar Association, Jamaet-i-Islami, People's League, Islamic Students League and Tehrik-ul-Mujahideen also condemned his killing and sponsored a call for mourning strike tomorrow jointly.

An official handout said that the Governor, Mr. Girish Chandra Saxena has expressed profound shock over the senseless killing of Mr. H.N. Wanchoo, a well known figure and a human rights activist in Srinagar.

Condemning the brutal killing of Mr. Wanchoo, the Governor in a condolence message described it as a dastardly act of terrorism. He said, every effort will be made to identify and apprehend the killers.

Wanchoo's killing widely condemned

Kashmir Times, December 7, 1992.

The tragic demise of H.N. Wanchoo, veteran trade unionist and human right activist was widely condemned by a cross section of people.

Describing it as an 'act of cowardice' which should be flayed by all with strong voice, CPI leader, Mr. Kulwant Manhas strongly condemned the killing saying that people of Jammu & Kashmir have lost a great worker and protagonist of human rights. The void caused by his death would never be filled, he added.

The general secretary of J&K National Conference Bashir Ahmad Kitchloo in a statement also expressed shock over the brutal killing of Mr. Wanchoo. Mr. kitchloo demanded a thorough probe into the unfortunate killing.

Local bodies employees Front, J&K Safaikaramchari Union, Jammu and Municipal Employees and Workers Union Jammu jointly condoled the gruesome killing of Mr. Wanchoo.

Two minutes silence was observed for the departed soul.

Heartfelt condolences and sympathies were conveyed to the family members of deceased by the leaders of these organisation and other parties.

Recalling his services for the upliftment of downtrodden and poor sections of society municipal workers paid him glorious tributes.

Kashmir Times (Jammu) Editorial
(December 7, 1992)

Untimely end

The heinous killing on Saturday of Kashmiri human rights leader Hridaynath Wanchoo by unidentified gunmen went almost unnoticed by the national press in the build-up to Sunday's cataclysm in Ayodhya. Although Governor Girish Chandra Saxena condemned it as a "dastardly and senseless act" and an official spoksman put the blame for killing on Kashmiri militants, the government version need not be taken at face value. Mr. Wanchoo, a State-level activist of the People's Union of Civil Liberties, had been energetically pursuing cases of suspected militants detained - many of them without official acknowledgment - for interrogation and drawing attention to abuses such as torture of the suspects. Mr. Wanchoo had, from the beginning of the campaign to evacuate Kashmir Pandits from the valley into the Jammu region or beyond, tried to rally his Hindu brethren to feel that those who sought to make them emigrate were misguiding them about the alleged danger to them. In this and in his belief in self-determination for Kashmir, he was close to the secular, independence-minded Jammu & Kashmir Liberation Front as against the fundamentalist militant groups who wanted merger with Pakistan, although he did not support the JKLF's violent tactics. If his assassination was the work of militants, it could be because they callously wanted to shift the blame on the Government, or because a pro-Pakistan group is involved. But it has to be said that for the killing of someone active in exposing human rights abuses by the

authorities the security forces themselves seem to have the most motivation.

If and when there is a genuine revival of the political process in Kashmir, persons such as Mr. Wanchoo, who understand the aspirations of the mass of the people but who are not quite on the side of the "enemy", would have played a key role. Their elimination - and it has to be said that the militants have had a large role in such eliminations - can only make a revival more difficult. His death comes at a time when moves to accommodate the viewpoint of international human rights organisations on the abuses in Kashmir and Punjab were getting off to a hesitant start. Only an inquiry seen to be impartial by Indian civil liberties organisations such as the PUCL can determine who killed him.

Wanchoo Memorial Committee formed

A ten-members Wanchoo Memorial Committee was setup today so that Wanchoo's contribution to Kashmiriat and his concern for human rights would be highlighted.

Mr. Gulam Nabi Hagroo Advocate will be Chairman of the committee while Mr. Nisar Ahmad will be the secretary.

The following will be other members of the committee :- Kumar Wanchoo, Mohammad Ashraf, Imroz Parvez, Mohammad syeed, Mir Qaiser Ahamad, Mohammad Akaram Sheikh, Gulam Mohammad Sheikh. The memorial will be raised at the premises of DAV school, Jawhar Nagar. It was also proposed that Jawhar Nagar would be renamed as Wanchoo Nagar.

Translated from Mashriq, Srinagar 12.12.1992.

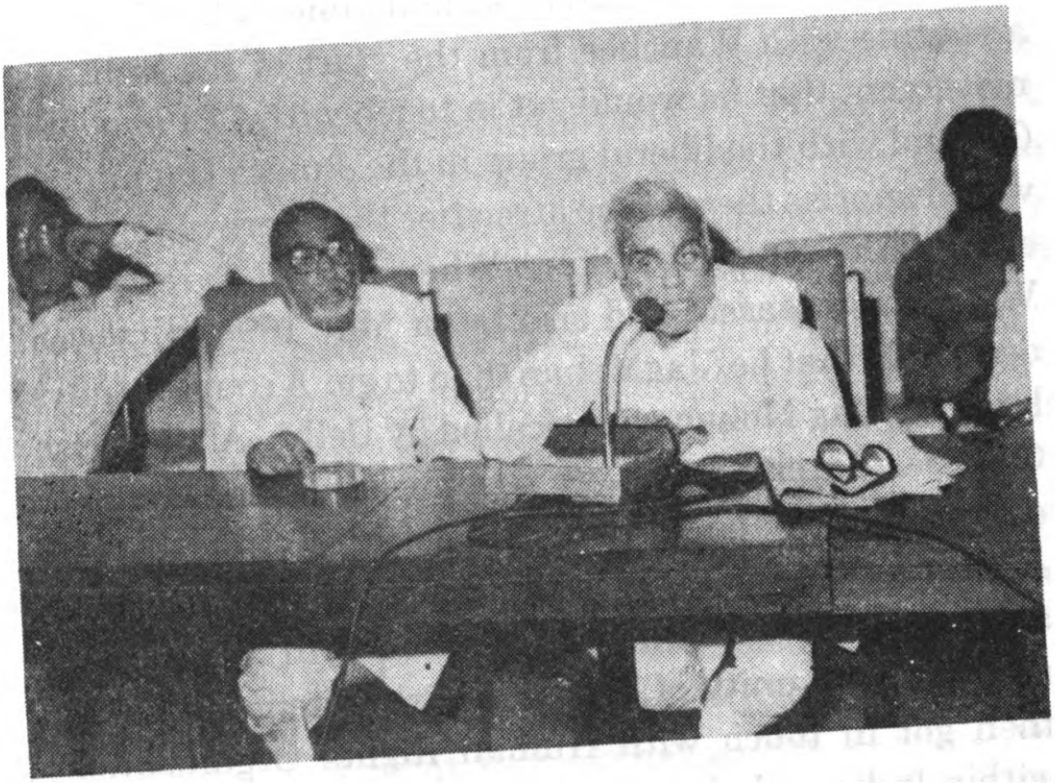
Hridey Nath Wanchoo
Pandit - who was first a Kashmiri and Last a Kashmiri

—Masood Hussain

There are many an event in the history of the world to show how suppressed people and individuals rose against the cruel and the mightiest. Many a time the friends of humanity caused a great stir in the mansions of the mighty rulers. There have been examples of the people who rose to support the depressed and down- trodden irrespective of caste, colour and creed. Wanchoo was a person of this category.

When the militants saw Farooq Abdullah's Government out and Jag Mohan took over as governor for the second time, a reign of terror was let loose in Kashmir. As the Governor Mr. Jag Mohan said he snatched away Kashmir from the clutches of Pakistan and for this, as it were, he had to let loose a reign of terror on Kashmiris. There was nothing like snatching away Kashmir from Pakistan; it was Mr. Jag Mohan's fantasy only. In fact, It was JagMohan who gave Kashmiris a thinking that if they had to survive, they should take up arms. It was Mr. JagMohan who gave the secessionist movement its teeth in a big way and it was during JagMohan's time when atrocities were committed against the innocent people on a large scale and when pregnant women could not reach the hospital during long spells of curfew and they died. There was then only one voice against these cruelties and that was of Hardey Nath Wanchoo.

In 1989, Wanchoo was only a less known Trade Union Leader but by the time he was assassinated he had



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earned National and International fame. It had become a routine with Wanchoo from the start of the militant movement that he would get in touch with CPI and CPI (M) and with the liberal group in the Janata Dal and he would apprise them of the atrocities that were committed against the common people. When Moulvi Farooq (Mir Waiz) was assassinated on 21st of May 1990, it proved decisively that he (JagMohan) had to go. A couple of days later Mr. Jag Mohan was recalled by Delhi. After Girish Chander Sexena took over the governorship, Wanchoo could not continue his connection with left parties and Janata Dal because these parties thought that certain amount of repression was necessary in Kashmir to maintain the unity of India. A disheartened Wanchoo then got in touch with Human Rights Organisations within India and abroad and he remained in touch with these human rights organisations until his last breath. Informed sources said that he was in close touch with George Fernandes (the then Janata Dal member) and Fernandes would often enquire from Late Wanchoo as to what was happening in Kashmir.

When during Mr. Jag Mohan's second term as governor, mass exodus of the Pandits took place in Kashmir valley and some agents and vested interests started giving communal colour to the strife in Kashmir, Wanchoo declared that Pandit Exodus from valley was part of a conspiracy of the government which was aimed at communalising the situation and then killing a substantial number from amongst the Muslim community who were supposed to be part of the militancy. In exposing this conspiracy, Wanchoō and late Mohammad Shaban Vakil played a leading role. Both these friends raised issues

about governor Jag Mohan's secret meetings with some Pandit leaders. When Pandit Govt. Servants left the valley, Late Wanchoo raised the issue regarding payment of salary to these employees for no work in Jammu while the working employees in Kashmir were not paid salary at all. His contention was that such discrimination would further communalise the administration. He raised the issue with several leaders of political parties at the centre. Pandits were very unhappy with Late Wanchoo and it must be for that reason that his two daughters who were highly educated did not get a suitable match and for this Wanchoo was very sad. The fact, however, remains that Wanchoo felt a deep sympathy for his community which had suffered miseries through their displacement, but Wanchoo was sore at BJP exploiting the Pandits. He wanted Pandits to raise their own voice rather than allow BJP to exploit them politically.

Wanchoo was born on May 24, 1925 in Ganpat Yar to a judicial clerk Keshu Nath Wanchoo. They were four brothers and two sisters and he was the eldest. He passed his primary school at Barber Shah, Srinagar and the High School from Dilawar Khan, Srinagar in 1940. He completed his education in 1944 from SP College Srinagar. He joined Quit Kashmir movement in 1945 and He was arrested along with prominent workers like S.R. Shangloo and Mohammad Ummar Bhat. He was freed by Justice Masood Hasain in 1946 and when they were freed, all the three went to Lahore and started working in the name of peace committee. Later he helped Mohammad Ummar Bhat who became editor of a weekly paper 'up lift'. Then he joined Red Cross Society Srinagar, but he resigned in 1949 and remained unemployed till 1952. An influential

citizen Mirza Kamaluddin got him job as a clerk in the municipality of Srinagar. Wanchoo retired in municipality in 1980 but, by this time, he had established himself as a labour leader. Throughout his service career he contributed to the upliftment of sweepers and the other under-dog. They considered him their Messiah. He constantly strived that the under-dog sent their children to the school for education.

Wanchoo was a member of All India Trade Union Congress and he went to Moscow in 1979 and in 1984 he went to Prague to attend International Peace Conference where he met Palestinian leader, Yaser Arafat. When Mahatama Gandhi visited Kashmir in 1946, Wanchoo met him with an application for releasing some detenus. When in 1947 the detenus were exchanged between India and Pakistan, Wanchoo was present at Wagah Border (Border post between Lahore and Amritser). He Knew how Indian forces had searched the clothes of prominent Jammu & Kashmir leaders Moulvi Abdul Rahim and Choudary Gulam Abbas, President of Muslim Conference, who told IGP Prithi Nanadan Singh that he would take revenge if he (Mr. Singh) settled anybody else in his house at Jammu.

When Kashmir valley was declared a disturbed area, many a conscientious people started working for protection of human rights. But, it was late Wanchoo whose voice was powerful enough to be heard far and wide.

Wanchoo became a very important person and whosoever visited Kashmir from within India and abroad, all had to meet Wanchoo and get to know happenings in Kashmir. Late Wanchoo had established very close

relation with 'rights organisations' like PUCL, PUDR and other such organisations. Some people charged him to be one- sided as whereas he was very vocal on the atrocities against the majority community in Kashmir, he was almost silent on the injustice towards the members of the minority community. To this Wanchoo's explanation was that he was not a representative of Pandits and even when he would make a statement in their favour, he would not be considered genuine. Then, he did not consider the strife in Kashmir to be communal. He argued that if it were communal how would the overwhelming number of victims at the hands of militants be Muslims. Wanchoo's documents for 1990,1991, and 1992 showing atrocities at the hands of para-forces can be, rated as most perfect. He had filed as many as 62 cases of such atrocities in J&K High Court.

He visited Delhi in November 1992 to meet high ranking officials of the Amnesty International.

Wanchoo lived a life of extreme austerity as a pensioner and raised no money for fighting the cases of atrocities in courts. He used his old cycle as his mode of transport. After his friend Mohammad Shaban Vakil's assassination he fell ill and felt depressed.

Wanchoo was given Shaheed Aijaz Dar Memorial Award for his concern for human rights, in 1992.

Wanchoo was taken away by two gun-wielding youth in a scooter from his home in Jawahar Nagar for what was officially said to get two detenus released and he was shot dead at Balgarden. Wanchoo's death created a commotion in Kashmir. Thousands of his friends joined huge procession. Both the Govt. as also most militant outfits

condemned the assassination of Wanchoo and it was called a dastardly act of cowardice.

Thousands gathered in the vast compound of DAV School in Jawahar Nagar where he was cremated. A memorial committee was instituted to perpetuate the memory of Wanchoo as a brave and emancipated son of Kashmir.

Courtesy CHATTAN, Srinagar

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